

**REMARKS**

Claim 5 has been withdrawn from further consideration. Claims 13-15 have been amended to avoid possible future language objections. Claim 1 has been amended to clarify the claimed invention and better distinguish the claimed invention from the prior art. More particularly, claim 1 now specifies that the elongate flexible tape comprise a coiled tape. Claim 1 also has been amended to clarify that the contents of the blister are forceably ejected from the blister through puncture holes formed in the top crown areas. It is submitted that none of the applied art, taken alone or in combination teaches or suggests the features of claim 1 or the several claims dependent thereon.

Turning to the specific art rejections, the Examiner rejects claims 1 and 3 as obvious from the '237 patent to Eisele et al. The Examiner characterizes Eisele as teaching "an elongated flexible tape 194". The Examiner is wrong. Eisele's blister pack is not a flexible coiled tape as required by Applicant's claims. Rather, Eisele's device is a plastic carrier disk (Column 4, line 3) that is sufficiently rigid to support tabs 196 suspended within tab slots 198 by bridges 200 (Column 3, lines 64-65), so that tabs 196 may be pivoted to break the coil seal ring 192 sealing the blister 44 on the bottom of the blister allowing powdered drug 202 to fall into the staging area 124 (Column 4, lines 39-43). Moreover, contrary to the Examiner's statement in the second paragraph under Cipher 2 of the Action, in Eisele et al. the contents of the blister are not "forceably ejected from the blister but when the spaced areas are interfaced coupled with the vibratory de-aggregator". Rather, from the reading of the above passage it is clear that Eisele et al., the contents merely fall, under gravity, when the bottom of the blister is broken away.

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

As the Examiner is well aware, "Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention." *Structural Rubber Products Company v. Park Rubber Company*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984). Further, "Absence from a cited reference of any element of a claim of a patent negates anticipation of that claim by reference." *Kloster Speed Steel AB v. Crucible, Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986), on rehearing, 231 USPQ 160 (Fed. Cir. 1986). Thus, if even a single element found in Applicant's claims is not identically and exactly disclosed in Eisele et al. '663, the rejection of the claims, as amended, under 35 USC § 102 cannot be sustained.

Since claim 1 has at least two features not found in '237 to Eisele, claim 1, and claim 3 which depends thereon, cannot be said to be anticipated by Eisele.

The Examiners reliance on *Ex parte Masham* is not well based, since '237 to Eisele does not teach the claimed structural limitations. As noted supra, '237 to Eisele et al. teaches a rigid disk carrying a plurality of spaced blister packs. Applicant's independent claim 1, and the several claims dependent thereon, require an elongate flexible coiled tape. A elongate flexible coil tape is fundamentally different from a rigid disk and provides significant advantages, i.e., in terms of compactness, since a flexible elongate coil tape forms a compact package. Eisele et al.'s carrier disk is limited in the number of doses that can be carried without becoming too bulky.

Moreover, there are other significant structural differences. '237 to Eisele et al. is position sensitive, i.e., the disk must be essentially horizontal to dump the contents. And, forming the blister pack as flexible elongate tape permits Applicant to isolate a single blister when interfacing and coupling the tape with the vibratory de-aggregator. That is to say, flexible

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

tape permits vibratory isolation. Thus, Applicant's flexible tape structure permits maximum energy transfer to the specific blister being worked on. A rigid disk, on the other hand, even if coupled with a vibratory de-aggregator would absorb and dampen much of the vibratory energy. Of course, Eisele et al. doesn't contemplate coupling the vibratory de-aggregator in any event. In Eisele et al., de-aggregation is achieved solely by a downstream impellor.

Further with regard to the foregoing, the ability to isolate individual clusters for vibration by the use of a flexible tape as in Applicant's claimed invention also permits Applicant to optimize the frequency of the resonator for maximum material de-aggregation and ejection efficiency in a reliable and predictable manner. If Eisele et al.'s rigid disk somehow were coupled to a vibratory de-aggregator, the effect would vary depending on the number of unopened blister packs since the mass of the disk would vary depending on the number of unopened blister packs. That is, a new, i.e., fully loaded blister pack will dampen the vibratory energy far more than an almost emptied blister pack.

Thus, the prior art apparatus not only does not satisfy the claimed structural limitations, the claimed structural limitations provide significant functional advantages over the prior art apparatus. Accordingly, the rejection of claim 1, and the several claims dependent thereon was anticipated by '237 to Eisele et al. is in error.

Turning to the rejection of the claim 9 as obvious from Eisele et al.'s '237 in view of Pera, claim 9 is dependent on claim 1. The deficiencies of Eisele vis-à-vis claim 1 are discussed above. Eisele has been cited for the proposition of dispensing antioxidant vitamin by inhalation and is acknowledged as so teaching. However, Pera et al. does not teach or suggest any specific apparatus for this purpose, and therefore clearly can not supply the missing teachings to Eisele et

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

al.'s '237 to achieve or render obvious claim 1 or claim 9 which depends thereon. Thus, the rejection of claim 9 as obvious from Eisele '237 in view of Pera also is in error.

Turning to the rejection of claims 10 and 11 as obvious from Eisele '663 in view of Hendricks, Eisele '663 is similar to Eisele '237 in teaching a rigid disk carrying a plurality of blisters on its periphery. Thus, Eisele '663 is similarly distinguished from the flexible coil tape of Applicant's claimed invention, and suffers from many of the same disadvantages above discussed for Eisele '237.

The secondary reference, Hendricks which has apparently been cited simply for the teaching that the dry powder material may comprise a hormone or steroid certainly cannot be said to supply the missing teachings to Eisele '663. Accordingly, claims 10 and 11, which both directly depend on claim 1 cannot be said to be obvious from Eisele '663 in view of Hendricks.

Finally, and with reference to the rejection of claim 12 as obvious from Eisele '663 in view of Shyjan, claim 12 also is dependent on claim 1. The deficiencies of Eisele et al. '663 vis-à-vis claim 1 are discussed above. Shyjan, which discloses no specific structure, but rather appears to be cited solely as a teaching of a bioactive material certainly doesn't supply the missing teachings to Eisele '663 to achieve or render obvious claim 1 or claim 12 that depends thereon. Thus, the rejection of claim 12 also is in error.

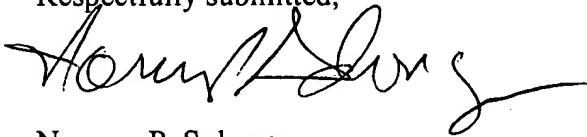
In view of the foregoing amendments and comments it is submitted that the claims, as amended are allowable over the art. Early and favorable action are respectfully requested.

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



Norman P. Soloway  
Attorney for Applicant  
Reg. No. 24,315

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 16, 2003, at Tucson, Arizona.

By 

NPS:sb

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567